IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY APPLICATION NO.588 OF 2005
IN
COMPANY PETITION NO.391 OF 1990

Crack Detectives Pvt. Ltd. ....Applicants.
Vs.
M/s. Lunebski Industrial Corporation and ors.
....Respondents.

Mr. M.P. Rege for the MSFC.

Ms. Shakuntala Joshi for the Applicants.

Mr.S.C.Gupta, O.L. present.

CORAM : A.M. KHANWILKAR,J.
DATED : OCTOBER 28, 2005.

P.C.

1. Heard counsel for the parties. Perused the pleading.

2. By this application, security agency appointed by the Official Liquidator, pursuant to the orders passed by this court, claims that the outstanding bills since 27.7.1996 till 31.8.2005 and further recurring bills have not been paid. Notice was issued to MSFC and Syndicate Bank who are the secured creditors of the respondent company. It appears that the Syndicate Bank has already sent communication to the Official

Liquidator pointing out that there is no outstanding claim against the company as the suit filed by them is disposed by the Civil Court on 30.9.1997. In other words, on and from 30.9.1997, Syndicate Bank has no concern with the property in question for which security arrangement has been provided; as a consequence, the bank will not be liable to share the burden of the security charges. There is force in this submission.

3. In so far as MSFC is concerned, it is not in dispute that its claim amount is yet to be finalised. MSFC is the secured creditor. In this back drop, MSFC will be solely liable to bear the security charges on and from 1.10.1997. However, the security charges incurred between 27.7.1996 till 30.9.1997 will be shared between MSFC and Syndicate Bank, in proportion to their claim amount.

4. The counsel for the MSFC has objected to the above arrangement, which objection will have to be rejected. The learned counsel would then contend that there is nothing on record to indicate that from the month of October,1998 security charges were allowed to be increased from Rs.15951.30 to Rs.16327.50 per month and from May,2002 onwards at the rate of Rs.16327.50ps. per month. To get over this position, the counsel for the

security agency submits that increase as aforesaid was necessitated on account of statutory liability (tax liability) and not towards the service charges to be recovered by the security agency. If this stand is correct, the security agency will be entitled to recover even the increased amount added on account of tax liability.

5. The counsel for the Security Agency would then contend that there is surplus amount of Rs.90,000/- lying with the Official Liquidator and that amount can be made over to the security agency towards the part adjustment of their claim. This request seems to be reasonable. The Official Liquidator would take necessary steps in this behalf. The Official Liquidator to recover the balance amount payable to security agency from MSFC and Syndicate Bank in proportion to their claim in terms of the observations made hereinabove.

6. Accordingly, this application as well as report is disposed of with directions to the Official Liquidator to call upon the security agency to substantiate its claim for increased security charges from October, 1998 from Rs.15951.30ps. to Rs.16327.50ps. and from May, 2003 to Rs.16794/- which is stated to be on account of service tax required to be recovered and paid in the

Treasury of the State Govt. If that claim is to be accepted, security agency would be entitled for increased security charges in terms of the bill submitted by it.

7. The Official Liquidator shall adjust the proportionate liability of MSFC and Syndicate Bank between 27.7.1996 till 30.9.1997, on being satisfied that order has been passed by court of competent jurisdiction disposing of the suit between Syndicate Bank and the Respondent company as having been settled out of court from which date the liability of Syndicate Bank to pay the security charges would cease. After the Official Liquidator has adjudicated the liability, necessary amount be recovered from MSFC to settle all the outstanding bills of the applicant agency from 27.9.1996 till 31.8.2005 and recurring bills submitted thereafter. The MSFC be called upon to pay the said amount.

8. Out of the surplus sale proceeds lying with the official liquidator, sum of Rs.80,000/- be made over to the Security Agency and Rs.10,000/- be set apart to cover the incidental expenses incurred by the Official Liquidator, if any.

9. The Official Liquidator to adjudicate the claim on the above basis and call upon the MSFC to pay the amount within specified time, so that on deposit of such amount, the possession of the immovable property can be made over to the MSFC. The entire procedure should be completed within four weeks from today.

10. In so far as relief in terms of prayer clause (b) and (e) of the report of the Official Liquidator dated 26.9.2005 are concerned, the same are granted. It is not necessary for MSFC to deposit the expenses towards the advertisement charges, as MSFC undertakes to issue advertisement in specified newspapers as per the format to be provided by the Official Liquidator. MSFC to deposit fees towards the valuation report to be invited within two weeks. Company application and the report is accordingly disposed of.

(A.M.KHANWILKAR, J.)